

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CAROLYN DUGGAN,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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*Appearances:*

*For the Plaintiff:*

CHARLES E. BINDER, ESQ.  
Law Office Charles E. Binder and  
Harry J. Binder  
485 Madison Ave. Suite 501  
New York, NY 10022

*For the Defendant:*

JACQUELYN KASULIS, ESQ.  
Acting United States Attorney  
Eastern District of New York  
By: SHRUTI TEJWANI, ESQ.  
Special Assistant United States Attorney  
271 Cadman Plaza East  
Brooklyn, New York 11201

**BLOCK, Senior District Judge:**

Carolyn Duggan (“Duggan”) seeks review of the Commissioner of Social Security’s denial of her application for supplemental security income benefits. Both parties move for judgment on the pleadings. For the following reasons, Duggan’s motion is granted, the Commissioner’s motion is denied, and the case remanded for further proceedings.

## I.

Duggan filed an application for Social Security Disability benefits (“SSD”) and Supplemental Security Income benefits (“SSI”) on October 24, 2016, with a disability onset date of July 12, 2016. Her claim was denied, and she requested a hearing before an Administrative Law Judge (“ALJ”) on July 12, 2016. On October 11, 2018, a hearing was held before ALJ Shawn Bozarth, who determined that Duggan had the severe impairments of “bipolar disorder and depression” and the nonsevere impairments of “spondylosis, irritable bowel syndrome and alcohol abuse.” A.R. 16. ALJ Bozarth ruled that Duggan was not disabled and concluded she had the residual functional capacity (“RFC”) to “perform a full range of work at all exertional levels” with several non-exertional limitations including “low stress,” “only occasional contacts with supervisors, co-workers, and customers” and close proximity to a bathroom. *Id.* at 17. The Appeals Council denied Duggan’s request for review on January 10, 2020.

## II.

“In reviewing a final decision of the Commissioner, a district court must determine whether the correct legal standards were applied and whether substantial evidence supports the decision.” *Butts v. Barnhart*, 388 F.3d 377, 384 (2d Cir. 2004); *see also* 42 U.S.C. § 405(g). “[S]ubstantial evidence ... means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson*

*v. Perales*, 402 U.S. 389, 401 (1971); *see also Selian v. Astrue*, 708 F.3d 409, 417 (2d Cir. 2013).

### III.

Duggan was a legal secretary until serious mental health issues<sup>1</sup> interfered with her ability to work. Since 2016 she has been receiving outpatient treatment for borderline personality disorder, bipolar disorder, depression, and alcohol dependency. She has attempted suicide in the past and has extreme difficulty navigating the world without verbal or physical altercations.<sup>2</sup> As a result, Duggan rarely leaves her apartment. When she ventures out to take care of essentials, like grocery shopping, it is “in the middle of the night” to limit contact with other people. A.R. 34.

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<sup>1</sup> Duggan’s treatment records clearly establish problems with anger management, rage, and aggressiveness (A.R. 451, 486, 490, 492, 494, 496-497, 501-502, 526, and 528); sadness (A.R. 451, 456-457, 460, 462, 476, 494, 496-497, 501-502, and 521-522); a history of trauma (A.R. 452, 462, 465, 487, and 521); anxiety (A.R. 456-457 and 465); depression (A.R. 456-457, 460, 462, 464, 465, 473, 478, 479, 481, 482, 483, 496-497, 501-502, 526, and 527); decreased insight (A.R. 456-457 and 496-497); decreased impulse control (A.R. 456-457, 487, and 501-502); feelings of hopelessness (A.R. 463 and 492); paranoid thinking (A.R. 472, 496-497, and 499); and suicidal ideation (A.R. 485, 487, 489, 490, 492, 499, and 501-502).

<sup>2</sup> *See* A.R. 37 (“Q[:]: Just give us an example of the type of situations that you find yourself in on the street.

A[:]: All right ... I went food shopping at Stop & Shop and there was woman that I thought was staring at me and I had a coupon and I realized I --

Q[:]: Well, what happened? You thought the woman was staring at you, and you had --

A[:]: I thought the woman was staring at me and I asked her what the F she was looking at, and she beat me up.

Q[:]: Okay, and --

A[:]: And I -- we fought. We got into a big physical confrontation [] in Stop & Shop.

Q[:]: Do you have other examples of this type of thing happening to you on the street?

A[:]: Yes, I -- another time on the subway, a woman attacked me from behind because I guess I gave her a dirty look”).

Duggan argues that the ALJ violated the treating physician rule.<sup>3</sup> The Court agrees.

Social Security Administration regulations and Second Circuit precedent “mandate specific procedures that an ALJ must follow in determining the appropriate weight to assign a treating physician's opinion.” *Estrella v. Berryhill*, 925 F.3d 90, 95 (2d Cir. 2019). The treating physician’s opinion is entitled to controlling weight, “so long as it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence.” *Estrella*, 925 F.3d at 95 (internal citations omitted). “[I]f the ALJ decides the opinion is not entitled to controlling weight, [he] must determine how much weight, if any, to give it” and must “explicitly consider” “(1) the frequen[cy], length, nature, and extent of treatment; (2) the amount of medical evidence supporting the opinion; (3) the consistency of the opinion with the remaining medical evidence; and (4) whether the physician is a specialist.” *Id.* at 95-96 (internal citations omitted).

Here, the ALJ improperly discounted the treating physicians – Drs. Tandon and Maddineni, both of whom concluded Duggan cannot work – and failed to

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<sup>3</sup> On January 18, 2017, the SSA revised the rules regarding the evaluation of opinion evidence for claims filed after March 27, 2017. *See* 20 C.F.R. § 404.1520c; 82 Fed. Reg. 5844. Because Duggan’s applications were filed before the enactment of the new rules, the Court will apply the rules that were in effect at the time of her applications.

conform to the framework laid out by the Second Circuit in *Estrella*. Specifically, the ALJ neither explained in detail why the treating physicians' opinions were not entitled to controlling weight, nor did he identify an alternative medical source for his ultimate conclusions. This is problematic because, as the Second Circuit has explained, the "treatment provider's perspective" is "all the more important in cases involving mental health, which are not susceptible to clear records such as x-rays or MRIs" and which "depend almost exclusively on less discretely measurable factors, like what the patient says in consultations." *Flynn v. Comm'r of Soc. Sec. Admin.*, 729 F. App'x 119, 122 (2d Cir. 2018). Since the ALJ erred by "substitut[ing] his own expertise or view of the medical proof for the treating physician's opinion," reversal is appropriate. *Greek v. Colvin*, 802 F.3d 370, 375 (2d Cir. 2015).

In addition, the ALJ seemed to believe Duggan's mental health issues were less severe than she claimed because she responded to treatment but did not always take her medication.<sup>4</sup> This conclusion was erroneous. As Judge Chen has noted, "[t]he ALJ does not appear to have considered the possibility, if not likelihood, that any failure by Plaintiff to take his medication is part of the [symptomology] for

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<sup>4</sup> See, e.g., A.R. 15 ("The claimant's sporadic compliance with mental health treatment and prescribed psychotropic medication, but improvement when adherent to her psychotropic medication regimen indicates that the severity of the claimant's bipolar disorder and depression is not to the degree alleged.")

[her] disorders.” *Roytman v. Comm’r of Soc. Sec.*, No. 19-CV-3626 (PKC), 2020 WL 5848615, at \*9 (E.D.N.Y. Sept. 30, 2020). It is evident from review of the medical record and Duggan’s testimony that she suffers from profound mental health issues that were improperly minimized by the ALJ. *See, e.g., Estrella*, 925 F.3d at 97 (“[c]ycles of improvement and debilitating symptoms are a common occurrence, and in such circumstances it is error for an ALJ to pick out a few isolated instances of improvement over a period of months or years and to treat them as a basis for concluding a claimant is capable of working.”) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014)).

Because the ALJ failed to properly weigh the treating physicians’ opinions and inappropriately minimized Duggan’s mental health issues, remand is appropriate.

### CONCLUSION

For the foregoing reasons, Duggan’s motion is GRANTED, the Commissioner’s motion is DENIED, and the case is remanded for reconsideration in light of this memorandum and order.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
July 19, 2020